

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
HARRISON L. SMITH,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 78-261

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER the appeal of a \$25 civil penalty for outdoor burning allegedly in violation of respondent's Section 4.01 of Regulation I having come on regularly for formal hearing on the 9th day of March, 1979 in Longview, Washington, and appellant, Harrison L. Smith, appearing and representing himself and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladley with William A. Harrison, hearing examiner presiding, and the Board having considered the exhibits, the records and files herein and having reviewed the Proposed Findings of Fact, Conclusions of Law and Order of the presiding

WAH/LB

1 officer mailed to the parties on the 16th day of March, 1979, and more
2 than twenty days having elapsed from said service, and

3 The Board having received no exceptions to said Proposed Findings
4 of Fact, Conclusions of Law and Order and the Board being fully advised
5 in the premises; now therefore,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
7 Findings of Fact, Conclusions of Law and Order dated the 15th day of
8 March, 1979, and incorporated by reference herein and attached hereto
9 as Exhibit A, are adopted and hereby entered as the Board's Final
10 Findings of Fact, Conclusions of Law and Order herein

11 DONE at Lacey, Washington this 16TH day of April, 1979.

12 POLLUTION CONTROL HEARINGS BOARD

13 
14 DAVE J. MOONEY, Chairman

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16 CHRIS SMITH, Member

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18 DAVID AKANA, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 CERTIFICATION OF MAILING

2 I, LaRene Barlin, certify that I mailed, postage prepaid, copies
3 of the foregoing document on the 17th day of
4 April, 1979, to each of the following-named parties
5 at the last known post office addresses, with the proper postage affixed
6 to the respective envelopes:

7 Mr. Harrison L. Smith
8 4508 N.E. 41st Street
9 Vancouver, Washington 98661

10 Mr. James D. Ladley
11 Attorney at Law
12 P. O. Box 938
13 Vancouver, Washington 98666

14 Southwest Air Pollution Control Authority
15 7601-H Northeast Hazel Dell Avenue
16 Vancouver, Washington 98665

17 La Rene Barlin
18 LARENE BARLIN, CONFIDENTIAL SECRETARY
19 POLLUTION CONTROL HEARINGS BOARD
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26 FINAL FINDINGS OF FACT,
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This matter, the appeal of a \$25 civil penalty for outdoor burning allegedly in violation of respondent's Section 4.01 of Regulation I, came before the Pollution Control Hearings Board on March 9, 1979 in Longview, Washington. Hearing examiner William A. Harrison presided alone. Appellant appeared and represented himself. Respondent was represented by its attorney, James D. Ladley. Olympia reporter Marilyn Hoban recorded the proceedings. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Witnesses were sworn and testified. Exhibits were examined.

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its Regulation I containing respondent's regulations
7 and amendments thereto of which official notice is taken.

8 II

9 Appellant, Harrison L. Smith, is a building subcontractor. At
10 times pertinent to this appeal he was working on a "spec." house which
11 was under construction at 6407 Northeast 70th Street, Vancouver. Just
12 prior to the events in question in this appeal, and during the cold
13 weather of November, 1978, appellant telephoned his local fire
14 department (Fire Protection District No. 6) and inquired whether it
15 was permissible to build a small warming fire on the construction
16 site. The fire official answering the inquiry authorized the fire and
17 said that he did not believe respondent would require a written permit
18 for such a small fire.

19 On November 13, 1978, in reliance upon advice received from his
20 local fire department, appellant ignited a small warming fire on the
21 construction site. The fire consisted of tree limbs gathered on the
22 site and was approximately two feet in diameter and one foot high. The
23 fire was not used to dispose of any construction materials since these
24 were hauled from the site for disposal elsewhere.

25 III

26 At 9:30 a.m. on the same date, November 13, 1978, respondent's

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 inspector observed the fire as described above. He issued a field
2 notice of violation to appellant, and appellant later received a
3 Notice of Violation assessing a \$25 civil penalty. From this appellant
4 appeals.

5 IV

6 Appellant has no prior record of violating any of respondent's
7 regulations.

8 V

9 Any Conclusion of Law which should be deemed a Finding of Fact
10 is hereby adopted as such.

11 From these Findings, the Pollution Control Hearings Board comes
12 to these

13 CONCLUSIONS OF LAW

14 I

15 Section 4.01 of respondent's Regulation I prohibits warming fires
16 to facilitate work on a construction site unless the respondent has
17 issued a prior written permit. Since he had obtained no written
18 permit from respondent, appellant violated respondent's Section 4.01
19 of Regulation I on November 13, 1978.

20 Section 2.10 of respondent's Regulation I authorizes the assessment
21 of a maximum penalty of \$250 for each such violation.

22 II

23 The Pollution Control Hearings Board has established a policy that
24 the good faith efforts of private citizens to comply with regulatory
25 provisions cannot be ignored by the regulatory agency involved and such
26 effort will be considered by this Board. Lloyds of Washington, Inc. v

27 FINDINGS OF FACT,
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1 PSAPCA, PCHB Nos. 868 and 869. The good faith efforts of appellant
2 Smith and the misleading nature of information given him by a
3 responsible public official are uncontroverted in this case. This
4 condition coupled with appellant's prior record of no violation of
5 respondent's regulations should result in mitigation of the penalty by
6 suspension.

7 III

8 Any Finding of Fact which should be deemed a Conclusion of Law
9 is hereby adopted as such.

10 From these Conclusions, the Board enters this

11 ORDER

12 The \$25 civil penalty is affirmed; provided however, that it is
suspended on condition that appellant not violate respondent's
14 regulations for a period of six months from the date of appellant's
15 receipt of this Order.

16 DATED this 15th day of March, 1979.

17 POLLUTION CONTROL HEARINGS BOARD

18 *William A. Harrison*

19 WILLIAM A. HARRISON
20 Presiding Officer

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26 FINDINGS OF FACT,
CONCLUSIONS OF LAW
27 AND ORDER